

In the Supreme Court of the United States

OCTOBER TERM, 1924

RAE BROOKS, PLAINTIFF IN ERROR	} No. 286
v.	
THE UNITED STATES	

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF SOUTH DAKOTA

BRIEF FOR THE UNITED STATES

ARGUMENT

I

This court lacks jurisdiction to review this case

This case is brought to this court direct from the trial court on the ground that it involves Constitutional questions under Section 238 of the Judicial Code. The alleged Constitutional questions are set forth in the first assignment of error (R. p. 18), which charges (1) that the so-called National Motor Vehicle Theft Act of October 29, 1919, Chap. 89, 41 Stat. 324, upon which the indictments were founded, is unconstitutional; and (2) that the indictments upon which he was convicted do not in-

form him of the nature of the charge with the particularity which he states is required by Article VI of the Constitution.

It may be demonstrated that none of the Constitutional questions above mentioned possesses sufficient merit to support the jurisdiction of this court.

1. The National Motor Vehicle Theft Act punishes (1) the transporting or causing to be transported in interstate or foreign commerce, of motor vehicles known to have been stolen; and (2) the receiving, concealing, storing, bartering, selling, or disposition of any such known stolen vehicle moving as, or which is a part of, or which constitutes interstate or foreign commerce.

It is altogether too late to argue that while Congress may forbid under penalty, the transportation in interstate commerce of an unobjectionable woman merely because of the immoral purpose of the man in effecting her transportation (*Caminette v. United States*, 242 U. S. 470, 491, 492, and cases therein cited), Congress is powerless to close the channels of such commerce to the transportation of vehicles known to have been stolen.

The contention of plaintiff in error likewise overlooks such exertions of legislative authority as were upheld by this court in—

Lottery Case, 188 U. S. 321, 357;

McDermott v. Wisconsin, 228 U. S. 115, 135;

United States v. Hill, 248 U. S. 420, 423-425;

and cases cited on page 425.

United States v. Simpson, 252 U. S. 465;

United States v. Ferger, 250 U. S. 199, 203.

Moreover, the Constitutionality of the statute here involved was upheld by the Circuit Court of Appeals for the Fourth Circuit in *Kelly v. United States*, 277 Fed. 405, 408-409. The following excerpt from the opinion in that case appears to be unanswerable (pp. 408-409):

To penalize the transportation of a given article is in effect to prohibit its transportation. And if the Congress may prohibit the interstate transportation of lottery tickets, *Champion v. Ames*, 188 U. S. 321, 23 Sup. Ct. 321, 47 L. Ed. 492; of impure foods and drugs, *Hipolite Egg Co. v. United States*, 220 U. S. 45, 31 Sup. Ct. 364, 55 L. Ed. 364; of intoxicating liquors into a prohibition state, even for personal use, *Clark Distilling Co. v. Western Maryland Ry. Co.*, 242 U. S. 311, 37 Sup. Ct. 61 L. Ed. 326, L. R. A. 1917B, 1218, Ann. Cas. 1917B, 845; and of women and girls for an immoral, though noncommercial purpose, *Caminetti v. United States*, 242 U. S. 470, 37 Sup. Ct. 192, 61 L. Ed. 442, L. R. A. 1917F, 502, Ann. Cas. 1917B, 1168—we perceive no reason, constitutional or other, why it may not in like manner prohibit the interstate transportation of motor vehicles known to have been stolen. As is said in *Hammer*

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v. *Dagenhart*, 247 U. S. 251, 271, 38 Sup. Ct. 529, 531 (62 L. Ed. 1101, 3 A. L. R. 649, Ann. Cas. 1918E, 724), reviewing the cases cited:

“In each of these instances the use of interstate transportation was necessary to the accomplishment of harmful results. In other words, although the power over interstate transportation was to regulate, that could only be accomplished by prohibiting the use of the facilities of interstate commerce to effect the evil intended.”

So in this case, the “harmful results,” obvious and frequently occurring, of transporting stolen motor vehicles from one state to another, can be prevented only by prohibiting altogether their interstate transportation, and such prohibition is therefore a valid exercise of the power invested in the Congress.

The statute has also been held valid by the Court of Appeals of the District of Columbia in *Whitaker v. Hitt*, 285 Fed. 797.

Other cases arising under this statute are—

Johnson v. United States, 293 Fed. 383;
~~*Friedman v. United States*, 233 Fed. 429;~~
United States v. Hampden, 294 Fed. 345;
Katz v. United States, 281 Fed. 129.

2. It is further contended that the indictments under which plaintiff in error was convicted, do not sufficiently apprise him of the accusation against him, and therefore violate his Constitutional right in that regard. There is clearly no substantial merit in such claim. The indictments

(R. pp. 2-5) set forth in certain language, the knowledge required by the statute. Every ingredient of the offenses is adequately set forth, and if further details were desired, a bill of particulars should have been requested. *Coffin v. United States*, 156 U. S. 432, 452. The indictment, after verdict, seems beyond attack. Moreover, plaintiff in error seems to have experienced no difficulty in preparing his defense on account of any insufficiency in the indictments.

See also *Kirby v. United States*, 174 U. S. 47, 63.

Finally it is not necessary here to uphold all the counts of the two indictments. The sentence imposed (R. pp. 12-13) was not in excess of that which could be imposed under a single count, therefore one good count will support the judgement of conviction. *Savage v. United States*, 270 Fed. 14, 17, and cases there cited.

The foregoing review and cases cited in support thereof make it plain that the Constitutional questions relied upon by plaintiff in error are too unsubstantial to support the jurisdiction of this court, and the case should therefore be transferred to the Circuit Court of Appeals for review pursuant to the provisions of Section 238a of the Judicial Code (42 Stat. 837). *Heitler v. United States* 260 U. S. 438.

II

The other errors complained of are typical of those usually alleged to occur in criminal trials,

and do not appear to be sufficiently prejudicial to require separate treatment.

III

It is respectfully submitted that the case should be transferred to the Circuit Court of Appeals, or the judgment of conviction affirmed.

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